IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Revision No.264 of 2006

DATE OF DECISION: DECEMBER 1, 2006

Shinder Kaur

...PETITIONER

VERSUS

Avtar Singh and others

...RESPONDENTS

CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL

Present: Mr.S.S.Joshi, Advocate,
for the petitioner.
None for respondents No.1 to 3.
Mr.N.S.Gill, AAG, Punjab,
for respondent No.4.

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Petitioner Shinder Kaur, who is the complainant, has filed this criminal revision against the judgment dated 11.7.2005 passed by the JMIC, Patiala, whereby accused respondents No.1 to 3 have been acquitted of the charges framed against them.

In spite of service, no one has appeared on behalf of respondents No.1 to 3. I have heard the counsel for the petitioner and counsel for respondent No.4.

As per the prosecution case, on 13.4.2002 an intimation was received from Rajindra Hospital, Patiala about admission of Jagdeep Kaur wife of Kuldeep Singh and Shinder Kaur wife of Karnail Singh (petitioner herein) as they were injured. Upon this, a police party reached to the hospital, where opinion about the fitness of the injured was sought. Then Jagdeep Kaur got recorded her statement before ASI Amarjit Singh to the effect that she was married with Kuldeep Singh two years back. For last one month, she had come to stay at her parental home at village Hardaspur. On that day, she and her mother Shinder Kaur were returning to her home after picking bundles of wheat spikes and wheat straw on their heads. At about 1.00 p.m., when they passed in front of the house of Sukhdev Singh son of

Lekh Singh, then from behind Kala Singh son of Sukhdev Singh,Tirath Singh @ Kirat Singh son of Sukhdev Singh and Savitri wife of Kala attacked them. Accused Kala gave a gandasi blow from reverse side on her left thigh and she threw the bundle of wheat spikes. Then Tirath @ Kirat gave a gandasi blow which hit on the middle finger and ring finger of her right hand. Simultaneously accused Kala gave a gandasi blow from its reverse side on the right thigh of her mother Shinder Kaur, who came forward to save the complainant, and then Savitri slapped on the face of the complainant and forcibly removed the earring from her right ear. Accused Kala gave gandasi blow from its reverse side on the arm of the complainant. Tirath @ Kirat accused gave blows on the left thigh, on the head above right ear, left arm of the mother of the complainant whereas Kala Singh gave a gandasi blow from the reverse side on the left hand thumb of her mother. Then Savitri accused took gandasi of Tirath Singh and gave a blow on the right leg of the mother of the complainant. Surjit Singh son of Sarjan Singh and Bhajan Kaur wife of Surjit Singh came at the spot who raised raula and all three accused ran away from the spot along with their respective weapons. Thereafter, the injured were got admitted in the hospital. The motive behind the occurrence is that a few days prior to the occurrence, there was an altercation between mother of the complainant and Mohinder Kaur, mother of accused Kala and Tirath, but Mukand Singh and other persons got a compromise effected. However, the accused were not satisfied due to which all the accused conspired and caused injuries to the complainant and her mother.

Counsel for the petitioner contends that the trial Court has not properly appreciated the evidence available on the record and wrongly given the benefit of doubt to the accused while acquitting them of the charges framed against them. Counsel further contends that the police has not properly recorded the statements of injured PW1-Jagdeep Kaur and PW2-Shinder Kaur.

The incident in this case pertains to the year 2002. In this case, the police has neither placed on record nor proved any recovery memo in respect of recovery of weapons of offence and even the weapons of offence have neither been produced nor proved in the Court. The only independent witness in this case was PW4-Surjit Singh. After his examination-in-chief,

the said witness was not produced for his cross-examination by the prosecution. The trial Court by giving benefit of doubt to the accused acquitted them while observing as under:-

> "The only independent witness PW4 Surjit singh examined in this case was not produced for his cross examination and as such his examination-in-chief can not be read against the accused. In a criminal trial, onus is on the prosecution to prove guilt of the accused beyond shadow of all reasonable doubts. The onus never shifts upon the accused because it is not for him to prove his innocence. Therefore, conviction of the accused cannot be recorded merely because they have not produced any evidence in defence. It is well settled proposition of law that if two views are possible from the material produced on record, then the court has to take the view which is favourable to the accused. Since the prosecution case is not proved beyond shadow of all reasonable doubts, therefore, I am of the view that it will not be safe to base their conviction merely because some injuries are proved to have been caused on the person of author of FIR and her mother Shinder Kaur. PW3 Dr.Gian Singh, who has conducted medico legal examination of the injured has conceded that injuries reported by him on the persons of injured may be caused in road accident and their possibility of having been caused by fall on hard surface can also be not ruled out. Therefore, the accused have become entitled to get benefit of doubt and acquitted of the charges framed against him."

In my opinion, the trial Court while acquitting the accused has rightly given the benefit of doubt to them in absence of proper evidence. Keeping in view the facts and circumstances of the case, no different view is possible, because in this case the prosecution failed to fully prove the guilt against the accused.

Hence, criminal revision is dismissed.

December 1, 2006 (SATISH KUMAR MITTAL)
vkg JUDGE